

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE No. 191443
Issued to: Michael ZOFCHAK

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2406

Michael ZOFCHAK

This appeal has been taken in accordance with Title 46 U.S.C. 7702, 46 CFR 5.30-1, and 46 CFR 5.30-15.

By order dated 30 August 1984, an Administrative Law Judge of the United States Coast Guard at Key West, Florida, revoked Appellant's license upon finding proved the charge of misconduct. The specification found proved alleges that while serving as Operator aboard the state numbered vessel FL-1263-BH under the authority of the captioned document, Appellant did, on or about 4 March 1984, wrongfully operate said vessel under the influence of alcohol.

The hearing was held at Key West, Florida, on 25 and 26 July and 30 August 1984.

At the hearing, Appellant elected to represent himself, and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence nine exhibits including the depositions of three witnesses.

In defense, Appellant introduced in evidence four exhibits and made an unsworn statement.

At the end of the hearing, on 30 August 1984, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved and served Appellant with a written order revoking his mariner's license.

The complete Decision and Order was served on 26 September 1984. Appeal was timely filed and a temporary document requested on 30 August 1984. Also on 30 August 1984, the Administrative Law Judge denied the request for a temporary document.

On 19 September 1984 Appellant filed a notice of appeal from the denial of a temporary license. Following the submission of his appeal from the denial of the temporary license, Appellant

submitted several documents indicating that he was beginning alcohol rehabilitation treatment. On 4 March 1985 Appellant submitted a notice that his treatment had been completed and asked that the temporary document be issued.

Appellant perfected his appeal on the merits of the case on 17 April 1985.

FINDINGS OF FACT

On 4 March 1984 Appellant was hired by five young women at Key West, Florida, for a trip to Woman Key aboard his 19-foot uninspected passenger vessel. Each of the women paid \$20.00 for the round trip. Woman Key is located some distance offshore. Appellant and the women left Key West at about noon and arrived at Woman Key about forty minutes later. At Woman Key, they remained ashore for about four hours.

While at Woman Key, Appellant consumed an excessive amount of alcohol including, wine, rum, beer and vodka punch. He became clearly intoxicated.

The return trip began at about 1600. At that time the weather was threatening. Nevertheless, Appellant decided to get underway. He had trouble starting the motor and as a result the boat grounded. It was freed with the help of individuals from shore.

During the course of the return trip the weather and sea conditions became considerably worse. The swells became heavy and there was torrential rain. Appellant, nevertheless, operated his vessel at high speed. As a result his passengers were buffeted about and became extremely frightened. He ignored repeated requests from them to reduce the speed. At that time, Appellant's speech was slurred and his footing was so unsteady that he was stumbling about. In addition, he attempted to trifle amorously with his passengers. He put his arms around one of the passengers and began touching her. As he bent over to hug two of the passengers, he jerked the wheel and lost control of the boat.

On this occasion, the boat went into a right turn at high speed and completed several circles. All of the passengers were roughly thrown to the side of the vessel. Appellant, himself, nearly fell overboard because of the force of the turn; however, one of the women grabbed his foot. Another of the passengers grabbed the wheel and straightened the boat out. Appellant, when he was safely in the boat, babbled about hitting a whirlpool. The passengers were "very scared and frightened." Two of the passengers repeatedly offered to steer the boat. However, Appellant was belligerent and insisted that he was under control.

Appellant again lost control of the boat and one of the passengers was forced to grab the wheel. She had to put the engine out of gear to stop the boat. Although Appellant continued to stumble and lose his balance, he refused to let the passengers operate the boat. When the boat finally arrived in the vicinity of the marina, Appellant said to the women "You drive," or "You take over. I can't do it." One of the passengers then docked the boat.

BASES OF APPEAL

Appellant takes this appeal from both the order revoking his license and the order denying him a temporary document imposed by the Administrative Law Judge. Appellant asks that:

1. The sanction ordered by the Administrative Law Judge be reduced because it is not consistent with the sanctions listed in the Scale of Average Orders.

2. The Administrative Law Judge's order denying him a temporary document be reversed.

APPEARANCE: Rick G. Bannon, Esq., Law Offices of David Paul Haran, Key West, Florida.

OPINION

Appellant asserts that the sanction imposed against him should be reduced because the Scale of Average Orders, 46 CFR Table 5.20-165, does not provide for revocation in the case of misconduct in absence of loss of life or serious injury. I do not believe that such a result is required.

Table 5.20-165 is for information and guidance of Administrative Law Judges only. Appeal Decisions 2242 (JACKSON & GAYLES) and 2313 (STAPLES). The orders listed for the various offenses are not intended, in any manner, to "affect the fair and impartial adjudication of each case on its individual facts and merits." 46 CFR 15.20-165. Consequently, it is not necessary that the Administrative Law Judge issue an order in every case, which conforms exactly to the listings in the table. It is not possible to reflect in a table such as this all of the possible circumstances which may arise in any offense. As a result, the Administrative Law Judge must be free to tailor the sanction imposed to the situation before him.

Considering the egregious nature of Appellant's actions on the occasion in question, I believe that revocation is proper. He seriously endangered the lives of all five of his passengers as well as his own. In addition, his actions resulted from the abuse

of alcohol. It is common knowledge that alcohol abuse often takes the form of a disease and results in repeated episodes of intoxication. This being the case, it was entirely proper for the Administrative Law Judge to find that it would be unsafe to allow Appellant to operate under authority of a Coast Guard issued operator's license until such time as it could be established that his drinking would pose no future danger to himself or his potential passengers. I find no abuse of discretion in the Administrative Law Judge's order of revocation in this case.

Disposition of the appeal on the merits renders the appeal from denial of the temporarily license moot. Appeal Decision 2354 (DITMARS).

I also note with regard to Appellant's subsequent claim of rehabilitation that 46 CFR 5.13-1(b) permits him to apply for a new license.

CONCLUSION

The sanction imposed in this case was appropriate under the circumstances. Disposition of the appeal on the merits renders the appeal from denial of the temporary license moot.

ORDER

The order of the Administrative Law Judge dated at Key West, Florida, on 30 August 1984 is AFFIRMED.

B. L. STABILE
VICE ADMIRAL, U.S. COAST GUARD
ACTING COMMANDANT

Signed at Washington, D.C. this 11th day of September 1985.